



LEXSTAT 42 NJR 2566(A)

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RULE PROPOSALS

**LABOR AND WORKFORCE DEVELOPMENT
DIVISION OF WORKERS' COMPENSATION**

42 N.J.R. 2566(a)

Proposed New Rule: N.J.A.C. 12:235-13.7

[Click here to view Interested Persons Statement](#)

Stop-Work Order

Authorized By: Harold J. Wirths, Commissioner, Department of Labor and Workforce Development.

Authority: *N.J.S.A. 34:1-5, 34:1-20, 34:1A-3(e)* and *34:15-79*.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2010-267.

A **public hearing** on the proposed new rule will be held on the following date at the following location:

Friday, November 19, 2010
10:00 A.M. to 12:00 Noon
New Jersey Department of Labor and Workforce Development
John Fitch Plaza
2nd Floor, Large Conference Room
Trenton, New Jersey

Please call the Office of Legal and Regulatory Services at (609) 292-2789 if you wish to be included on the list of speakers.

Submit written comments by December 31, 2010 to:

David Fish, Executive Director
Office of Legal and Regulatory Services
New Jersey Department of Labor and Workforce Development
P.O. Box 110 - 13th Floor
Trenton, New Jersey 08625-0110
Fax to: (609) 292-8246

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The agency proposal follows:

Summary

The Department is proposing a new rule at N.J.A.C. 12:235-13.7 in order to implement P.L. 2009, c. 87, which, among other things, amends *N.J.S.A. 34:15-79* so as to empower the Director of the Division of Workers' Compensation (the Director) to issue a stop-work order against an employer who has knowingly failed to provide workers' compensation protection, knowingly misrepresented one or more employees as independent contractors or knowingly provided false, incomplete or misleading information concerning the number of employees.

For the most part, the proposed new rule would mirror the pertinent provisions of *N.J.S.A. 34:15-79*, in that it would repeat the causes for issuance of a stop-work order and would set forth the procedures both for issuance by the Director of such an order and for the challenge thereof by an employer against whom such an order has been issued. Importantly, however, the proposed new rule would also include a definition of the term "knowing," and would explain precisely how an employer against [page=2567] whom a stop-work order has been issued may apply to the Director for a hearing to contest the order.

As the Department has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to *N.J.A.C. 1:30-3.3(a)5*.

Social Impact

P.L. 2009, c. 87, which the proposed new rule would implement, gives the Director a powerful tool to ensure compliance by employers with their statutory obligation to provide workers' compensation protection to all employees. In addition to providing a ready reference for employers and employees as to the substantive and procedural requirements for the issuance of a stop-work order, the proposed new rule would provide important information to employers and employees as to the definition of the term "knowing," and as to the precise manner in which the employer may apply for a hearing to contest whether it has committed the violation on which the stop-work order is based. Providing this information to the regulated community will assist both the Director in effectively enforcing the law and the regulated community in its efforts to comply with the law.

Economic Impact

As indicated above, the majority of the proposed new rule would mirror the law in that it would set forth the substantive and procedural requirements for issuance by the Director of stop-work orders and the challenge of those orders by employers. Therefore, whatever negative economic impact would be felt by employers against whom stop-work orders are issued by the Director would derive in the first instance from the law, P.L. 2009, c. 87, not the proposed new rule. That is, the law requires that under certain circumstances the Director must issue a stop-work order. The Department has no discretion to deviate from the law. As to that portion of the proposed new rule which would contain a definition of the term "knowing," which definition does not appear in the law, the proposed new rule would have a positive economic impact on affected employers, their employees, and those businesses which engage the services of affected employers. Specifically, the proposed new rule would clearly delineate when the wrongful act of an employer is "knowing," thereby justifying the issuance of a stop-work order. The stop-work order is a penalty with profound and far reaching economic consequences, as opposed to, for example, the levying of administrative penalties. Whereas the latter affects only the violator, the former impacts other workers and businesses working on a given worksite with the affected employer and other employers and employees doing business with the affected employer. It is important to all parties involved in these matters that any ambiguities present in the law be cured by regulation. The clarity sought to be achieved by the definition of "knowing" within the proposed new rule would inure to the economic benefit of all involved, including employers, employees, the public and the State.

Federal Standards Statement

A Federal standards analysis is not required because the proposed new rule is not subject to any Federal standards or requirements. Specifically, the subject matter of the proposed new rule is governed by State law, *N.J.S.A. 34:15-1* et seq. (the Workers' Compensation Law).

Jobs Impact

The proposed new rule would have no impact on either the generation or loss of jobs.

Agriculture Industry Impact

The proposed new rule would have no impact on the agriculture industry.

Regulatory Flexibility Statement

The proposed new rule would impose no reporting, recordkeeping or other compliance requirements on small businesses, as the term is defined in the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq. Rather, the proposed new rule would simply reiterate the substantive and procedural requirements for issuance by the Director of a stop-work order under P.L. 2009, c. 87, define the term "knowing," as explained in detail above, and explain how an employer may apply to the Director for a hearing challenging the issuance of a stop-work order. Employers should not require outside professional services to comply with the proposed new rule.

Smart Growth Impact

The proposed new rule would have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact

The proposed new rule would not evoke a change in the average costs associated with housing. The basis for this finding is that the proposed new rule pertains to the issuance of stop-work orders by the Director pursuant to P.L. 2009, c. 87, and has nothing whatsoever to do with housing.

Smart Growth Development Impact

The proposed new rule would not evoke a change in the housing production within Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan. The basis for this finding is that the proposed new rule pertains to the issuance of stop-work orders by the Director pursuant to P.L. 2009, c. 87, and has nothing whatsoever to do with housing production.

Full text of the proposed new rule follows:

12:235-13.7 Stop-work order

(a) Besides any other penalties, remedies or sanctions as provided by statute or regulation, an employer who knowingly fails to provide workers' compensation coverage, who knowingly misrepresents one or more employees as independent contractors or who knowingly provides false, incomplete or misleading information concerning the number of employees, shall be subject to a stop-work order by the Director of the Division of Workers' Compensation.

(b) A violation under (a) above shall be considered to be "knowing" if the employer:

1. Has previously obtained workers' compensation insurance and the insurance has been cancelled or the insurance has not been continued or renewed;
2. Has been advised of the need for workers' compensation insurance by the Division of Workers' Compensation or any other agency of the New Jersey Department of Labor and Workforce Development; or
3. Has had one or more previous violations of workers' compensation coverage requirements, including, but not limited to, failure to obtain workers' compensation insurance or to qualify as a self-insuring employer, misreporting or misre-

presentation of the number of employees and/or misreporting or misrepresentation of employees as independent contractors.

(c) A stop-work order against an employer shall apply against any successor firm, corporation or partnership of the employer in the same manner that it applies to the employer.

(d) On finding a violation under (a) above after investigation, the Director shall issue, not later than 72 hours after making such determination, a stop-work order requiring the cessation of all business operations of the employer at every site at which the violation occurs.

1. A stop-work order shall take effect when served upon the employer, or, for a particular employer worksite, when served at the worksite.

2. A stop-work order shall remain in effect until the Director issues an order releasing the stop-work order upon finding that the employer has come into compliance and has paid any penalty assessed.

(e) An employer who is subject to a stop-work order shall have the right to apply to the Director, not more than 10 days after the order is issued, for a hearing to contest whether the employer committed the violation on which the order was based.

1. Application to the Director for a hearing by an employer who is subject to a stop-work order shall be in writing and hand delivered to the Director within the statutorily prescribed period at 1 John Fitch Plaza, Trenton, New Jersey, or submitted by certified mail, postmarked within the prescribed period, to the Director, Division of Workers' Compensation, P.O. Box 381, Trenton, New Jersey 08625-0381.

2. The hearing shall be afforded and a decision rendered by the Director or the Director's designee in the Director's absence within 48 hours of the Director's receipt of the application.

[page=2568] (f) Failure or refusal to comply with a stop-work order issued by the Director shall, in addition to any other penalties provided by law, result in the assessment of a penalty of not less than \$ 1,000 and not more than \$ 5,000 for each day the employer is found not to be in compliance.